

D.T.E. 03-58

Investigation by the Department of Telecommunications and Energy, on its own motion, as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 241, filed with the Department on May 15, 2003, by Cambridge Electric Light Company d/b/a NSTAR Electric.

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FOR: CAMBRIDGE ELECTRIC LIGHT COMPANY
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FOR: CITY OF CAMBRIDGE
Intervenor

I. INTRODUCTION

_____ On May 15, 2003, pursuant to G.L. c. 164, §§ 34A, 94, and 220 C.M.R. §§ 5.00 et seq., Cambridge Electric Light Company d/b/a NSTAR Electric (“Cambridge” or the “Company”), filed for approval by the Department of Telecommunications and Energy (“Department”), a new Rate S-2 tariff, M.D.T.E. No. 241, Street Lighting - Customer Owned. On June 18, 2003, the Company filed a revised S-2 Tariff (“S-2 Tariff”) that replaces and supercedes the May 15, 2003 tariff filing.¹ The S-2 Tariff is for municipal customers that elect to purchase streetlighting facilities owned by Cambridge, pursuant to G.L. c. 164, § 34A. The Department has docketed this matter as D.T.E. 03-58.

On May 29, 2003, the Department suspended the operation of the rates and charges in the S-2 Tariff until December 1, 2003, in order to investigate the propriety of the proposed tariff. Cambridge Electric Light Company, D.T.E. 03-58 (2003). On August 4, 2003, pursuant to notice duly issued, the Department conducted a public hearing and procedural conference. The Department allowed the petition to intervene of the City of Cambridge (“City”). On September 9, 2003, the Department conducted an evidentiary hearing. The Company sponsored the testimony of Henry LaMontagne, director of regulatory policy and rates. The evidentiary record consists of six Company exhibits, four responses to Department information requests, seven responses to City information requests and four record requests. Initial and reply briefs were filed the Company and the City.

¹ The Company revised the tariff because the May 15, 2003 filing inadvertently failed to reflect distribution charges for its non-metered streetlights (Exh. CAM-1, at 1).

II. THE COMPANY'S PROPOSAL

The Company states that, at present, it does not have an alternative streetlighting tariff available for municipal customers pursuant to G.L. c. 164, § 34A (Exh. CAM-1, at 1).

Therefore, the Company proposes the S-2 tariff in order to accommodate a customer that may elect to purchase the Company's streetlighting facilities in the future (id.).² The S-2 tariff

provides that, upon a customer's written application and the execution of: (1) a

Customer-Owned Streetlighting Agreement; and (2) a pole attachment License Agreement with the Company and any joint owners of the poles subject to sale, streetlighting service would be available to serve such customer-owned streetlighting equipment (id. at 2). Streetlighting service pursuant to the S-2 tariff would be available, but would not be metered and instead would be billed for approximately 4,000 hours for the lighting of streets, highways and other roadways that have been deemed public ways by the municipal customer (id.).

The Company proposed to calculate the charges for S-2 Tariff by assuming that all streetlight equipment available for sale would be purchased. Cambridge started with the charges for Rate S-1 approved in its last rate case, Cambridge Electric Light Company, D.P.U. 92-250 (1993) (Exhs. CAM-1, at 2; CAM-DTE-1-1 (d); CAM-DTE-1-2(c)). Rate S-1 is currently the Company's only streetlight tariff (Exh. CAM-1, at 2). In order to create a rate for streetlighting service without charges for streetlighting equipment, the Company removed

² The only municipal customer served by the Company is the City of Cambridge. The proposed rate S-2 tariff would serve as an alternative streetlighting tariff for Cambridge should it choose to purchase the Company's streetlighting facilities in the future.

from Rate S-1 the marginal costs of the equipment that would be purchased (Exh.CAM-DTE- 1-1).³ This calculation was performed for each category of streetlight by type and size (id.). This includes all investment costs normally associated with the Company's Account 373⁴ and the expenses normally associated with its Operations and Maintenance Accounts 585 and 596 (id.).

The resulting charges were then increased by the rate of inflation from March 1, 1998 to the present, as approved in its reconciliation filings. Next, the charges were decreased by fifteen percent pursuant to G.L. c. 164, § 1B(b) (Exh. CAM-1, at 2). Last, the Company subtracted the current standard offer service charge, transmission charge, energy efficiency charge, renewables charge, and transition charge from the resulting charges to determine the S-2 Tariff luminaire charges (id.). The luminaire charges consist of a fixed customer charge and a distribution charge (id.).

III. POSITIONS OF THE PARTIES

_____A. Company

The Company states that its S-2 Tariff is consistent with the Department's long-standing rate structure goals of: (1) efficiency; (2) simplicity; (3) continuity; (4) fairness; and (5) earnings stability (Company Initial Brief at 3). Cambridge maintains that Department precedent regarding G.L. c. 164, § 34A is not uniformly applicable to the Company's S-2

³ The Department approved the marginal costs of the streetlight equipment in D.P.U. 92-250 (1993).

⁴ Account 373 is streetlight associated plant (Exh. CAM-1, at 2).

Tariff (id. at 7). However, the Company states that its rate design methodology is consistent with that used by companies for designing alternative streetlight tariffs (id.).

The Company maintains that the proposed S-2 Tariff is efficient because it includes those costs approved by the Department that reflect the cost to society of providing utility service to municipal streetlights (id. at 5) ⁵. The Company states that the rate design promotes fairness because the Rate S-2 Tariff is structured to ensure that the class of customers that purchase the Company's streetlights pays no more than the costs of serving that class (id. at 5-6). The Company states that the rate structure promotes the Department's goal of simplicity by removing those costs that relate specifically to the costs of the fixtures that will be purchased by a customer (id. at 6). In addition, the Company maintains that the Rate S-2 Tariff is consistent with the Department's goal of rate continuity and earnings stability because the revenue requirement is the same as approved by the Department for the streetlighting class in D.P.U. 92-250 (id.).

The Company states that its methodology for designing its S-2 Tariff is consistent with G.L. c. 164, § 34A and approved ratemaking practices, and therefore should be approved by the Department (id. at 9). The Company concludes that the proposed Rate S-2 tariff cannot be compared directly with the rates of other distribution companies because both the costs of those companies, and the circumstances under which their customer-owned streetlighting tariffs were approved, are different from those of the Company (Company Reply Brief at 13).

⁵ The Company states that the S-2 tariff includes those approved costs minus the Specific Facilities Costs, which consist of facilities costs, interests costs and maintenance costs.

B. City

The City argues that the proposed tariff does not comply with G.L. c. 164, § 34A because it does not represent a distribution tariff that is limited to a distribution service (City Initial Brief at 1, 16). The City maintains that the Company is seeking costs in the proposed tariff that should not be included in a G.L. c. 164, § 34A tariff, such as redundant streetlight services and double-cost recovery for some distribution activities (id. at 2, 16). The City states that the Company's proposed tariff seeks cost recovery that is inconsistent with Department precedent, and not based on meeting the compliance distribution revenue requirement in the underlying cost of service study and underlying rates (id. at 2).

_____The City argues that the Company's proposed tariff seeks a customer charge per light that was specifically excluded in Boston Edison Company, D.T.E. 98-108 (1999), where the Department approved a settlement providing for a customer charge per account (id. at 2-3). Further, the City maintains that the Company has not unbundled the current streetlighting rates by separating the costs for distribution service from the costs for lamp service as set forth in Massachusetts Electric Company, D.T.E. 98-69 (1999) (City Reply Brief at 2). In addition, the City states that the customer charge is designed to recover costs that include separate charges for services under the proposed license agreement and would require the City to subsidize private streetlight customers (City Initial Brief at 6, 9). The City maintains that any customer charge should only relate to services incidental to distribution service (id. at 10). The City argues that the Company has not met its burden of demonstrating that its proposed tariff recovers only the distribution revenues approved in the underlying cost studies and underlying tariff (City Reply Brief at 7).

IV. STANDARD OF REVIEW

_____ G.L. c. 164, § 34A (“Section 34A”) authorizes municipalities to convert their street lighting service from the subject tariff to an alternative tariff approved by the Department providing for delivery service by the electric company of electric energy, whether supplied by the electric company or any other person, over distribution facilities and wires owned by the electric company to lighting equipment owned or leased by the municipality of the space on any pole, lamp post, or other mounting surface previously used by the electric company for the mounting of the lighting equipment of the electric company. Section 34A does not prescribe how the alternative streetlighting tariff should be designed. Massachusetts Electric Company, D.T.E. 98-69, at 11 (1999). When a municipality chooses to purchase streetlighting equipment pursuant to Section 34A, it is necessary for an electric company to unbundle the current streetlighting rates by separating the costs for distribution service from the costs for lamp service and to develop an alternative streetlighting rate. D.T.E. 98-69, at 13.

V. ANALYSIS AND FINDINGS

The statutorily mandated rate reductions need only be applied to tariffed rates approved by the Department before January 1, 1997. G.L. c. 164, § 1B(b); D.T.E. 98-69, at 1. Therefore, because the Company’s S-2 Tariff is a new tariff, the Department may, but is not required to, price the alternative streetlighting rate to meet the otherwise mandated rate discounts. D.T.E. 98-69, at 11. In addition, in Massachusetts Electric Company, D.P.U./D.T.E. 96-25-C (1997), the Department noted that municipalities that choose to purchase streetlights and then convert to an alternative tariff may fall outside the rate reductions requirement of G.L. c. 164, § 1B(b).

In D.T.E. 98-69, at 11, the Department found that:

The record in [D.T.E. 98-69] supports a finding that all equipment in Account 373 serves no purpose in the distribution system. Accordingly, all equipment included in Account 373 shall be subject to sale and shall be removed from the rate base allocated to Rate S-5 [Massachusetts Electric Company's alternative streetlight tariff].

Here, the Company proposes to remove marginal costs rather than embedded costs from Rate S-1, a bundled streetlighting rate, based on the cost to serve as determined in D.P.U. 92-250. However, the Company, in its restructuring plan, unbundled its rates based on its calendar year 1995 cost-of-service study. Cambridge Electric Light Company/Commonwealth Electric Company/Canal Electric Company, D.P.U. 97-111(1998). The Company has not satisfactorily justified its departure from the precedent enunciated in D.T.E. 98-69. In that proceeding, Massachusetts Electric Company's alternative streetlight tariff, Rate S-5, was based on the cost-of-service study filed in the Company's restructuring settlement in D.P.U. 96-25. In order for the Company to be consistent with Department precedent, the Company must recalculate its proposed alternative streetlight tariff as part of its compliance filing in the following manner.

First, the Company must start with the revenue requirement approved in D.T.E. 97-111 for outdoor streetlights, because this is what was used to establish the current distribution rates and this method is consistent with the method approved in D.T.E. 98-69. Second, the Company is to remove the embedded costs, rather than the marginal costs, associated with Accounts 373, 585, and 596, because in rate design, the Department uses marginal costs only as a tool to establish the charge for certain rate components to meet its goal of efficient pricing. However, overall, each rate class must collect its revenue requirement. Third, the Company

does not need to adjust the revenue requirement for inflation or the 15 percent discount consistent with the Act and DTE 98-69, as discussed above. Last, consistent with D.T.E. 98-69, the Company shall determine a rate per KWH to serve the Rate S-2 load that will collect the remaining revenue requirement. This rate, multiplied by the number of hours each lamp is on per year (approximately 4,000 hours) and the wattage in kilowatts of each lamp type, determines the annual luminaire charge. The Department directs the Company to take the above steps to recalculate the S-2 Tariff as described when it submits its compliance filing.

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the proposed tariff of Cambridge Electric Light Company, M.D.T.E. No. 241, submitted on June 18, 2003, is hereby DENIED; and it is

FURTHER ORDERED: That Cambridge Electric Light Company shall file rates and charges in compliance with the requirements of this Order; and it is

FURTHER ORDERED: That the new rates filed by Cambridge Electric Light Company shall apply to electric service consumed on or after December 1, 2003, but unless otherwise ordered by the Department, shall not become effective until a filing that demonstrates that such rates comply with the Order has been approved by the Department.

By Order of the Department

/s/ _____
Paul G. Afonso, Chairman

/s/ _____
James Connelly, Commissioner

/s/ _____
W. Robert Keating, Commissioner

/s/ _____
Eugene J. Sullivan, Jr., Commissioner

/s/ _____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).